

that the court lacked jurisdiction because his offenses did not occur on federal land; this supposed legal argument fails on its face because his conviction was for a federal drug conspiracy under Title 21, which does not require that such offense occur on federal land.

Under the reasoning of Castro v. United States, 540 U.S. 375 (2003), the court has considered whether it should re-characterized such motions as a § 2255 petition as they come after the Judgment. Review of the docket reveals that the Judgment of this court is presently on appeal; thus, there is non-exhaustion of petitioner's direct appeal and the court's Judgment is not final. Second, the claims raised in the form motions are patently frivolous and do not rise to a level that should be considered as invoking the one-time-only protections afforded under Section 2255. Finally, the court has considered whether it should take up the motions at all based on the pendency of the appeal. Rule 38(a) of the Federal Rules of Criminal Procedure governs consideration of motions filed in the district court during the pendency of an appeal. In particular, Rule 38(a) provides, as follows:

- (a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
- (1) defer considering the motion;
 - (2) deny the motion; or
 - (3) state either that it would grant the motion if the court of appeals Remands for that purpose or that the motion raises a substantial issue.

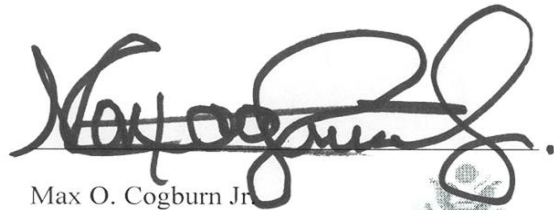
Fed.R.Civ.P. 62.1.

Under Rule 38(a)(2), the court determines that it is appropriate to take up the motions as they do not raise substantial issues that would impact the appeal. The court will deny the relief sought in the instant motions as the form motions are patently frivolous.

ORDER

IT IS, THEREFORE, ORDERED that defendant's pro se motions (#238) and (#239) are **DENIED**.

Signed: April 14, 2015



Max O. Cogburn Jr.
United States District Judge